



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

Form 1A. Notice of Lawsuit and Request for Waiver of Service of Summons

TO: (A) Philip H. Gitlen, Esq.

[as (B) Attorney of (C) Allied Signal, Inc and Amphenol Corp.

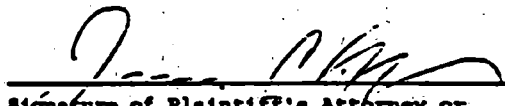
A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Northern District of New York and assigned docket number (E) 97 CV .

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf
of the plaintiff, this 31st day of March 19 97.



Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

NOTES:

- A - Name of individual defendant (or name of officer or agent of corporate defendant)
- B - Title, or other relationship of individual to corporate defendant
- C - Name of corporate defendant, if any
- D - District
- E - Docket number of action
- F - Addressee must be given at least thirty (30) days (Sixty (60) days if located in foreign country) in which to return waiver

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

United States of America

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Allied Signal, Inc. and Amphenol Corp.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

George A.B. Pierce (202) 514-2800
Environmental Enforcement Section
ENRD
P.O. Box 7611, Washington, D.C. 20044

ATTORNEYS (IF KNOWN)

Philip H. Gitlen, Esq.
Whiteman, Osterman & Hanna
One Commerce Plaza
Albany, NY 12260

II. BASIS OF JURISDICTION

PLACE AN X IN ONE BOX ONLY

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

CERCLA 42 U.S.C. §9607

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div><div><div>110 Insurance</div><div>120 Marine</div><div>130 Motor Acc</div><div>140 Negotiable Instruments</div><div>150 Recovery of Overpayment & Enforcement of Judgment</div><div>151 Medicare Act</div><div>152 Recovery of Confused Student Loans (Educ. Improvement)</div><div>153 Recovery of Overpayment of Veterans's Benefits</div><div>160 Stockholders' Suits</div><div>190 Other Contract</div><div>195 Contract Product Liability</div></div></div>	<div><div><div>PERSONAL INJURY</div><div>310 Airplane</div><div>315 Airplane Product Liability</div><div>320 Assault, Libel & Slander</div><div>330 Federal Employees' Liability</div><div>340 Marine</div><div>345 Moving Product Liability</div><div>350 Motor Vehicle</div><div>355 Motor Vehicle Product Liability</div><div>360 Other Persons' Injury</div></div></div>	<div><div><div>PERSONAL INJURY</div><div>362 Personal Injury - Med. Malpractice</div><div>365 Personal Injury - Product Liability</div><div>368 Assaulting Persons Injury - Public Liability</div><div>PERSONAL PROPERTY</div><div>370 Other Fraud</div><div>371 Torts in Land</div><div>380 Other Persons' Property Damage</div><div>385 Property Damage - Product Liability</div></div></div>	<div><div><div>610 Agriculture</div><div>620 Other Food & Drug</div><div>625 Civil Asset's Seizure of Property 21 USC 881</div><div>630 Labor Laws</div><div>640 R & Truck</div><div>650 Airline Accs</div><div>660 Occupational Safety/Health</div><div>690 Corp</div></div></div>	<div><div><div>422 Assets</div><div>28 USC 156</div><div>423 Debts</div><div>28 USC 157</div><div>PROPERTY RIGHTS</div><div>820 Copyrights</div><div>830 Patent</div><div>840 Trademark</div><div>SOCIAL SECURITY</div><div>861 SSA (12954)</div><div>862 SSA (12954)</div><div>863 CHIC (Chwv 1405(g))</div><div>864 SSC T-36 XVI</div><div>865 PSI (405(g))</div><div>FEDERAL TAX SUITS</div><div>870 Taxes to U.S. Plaintiff or Defendant</div><div>871 IRS - Third Party 26 USC 7609</div></div></div>	<div><div><div>400 State Reorganization</div><div>410 Antitrust</div><div>430 Banks and Banking</div><div>450 Commerce - N.C. Rates, etc</div><div>460 Decorations</div><div>470 Receiver Influence and Control Organizations</div><div>480 Securities Services</div><div>850 Securities - Commodities Exchange</div><div>875 Customer Challenge 12 USC 3410</div><div>891 Agriculture Acts</div><div>892 Economic Stabilization Act</div><div>893 Environmental Matters</div><div>894 Energy Allocation Act</div><div>895 Freedom of Information Act</div><div>900 Access of Fee Determination Under Equal Access to Justice</div><div>950 Contributions to State Securities</div><div>990 Other Statutory Actions</div></div></div>
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<div><div><div>210 Land Condemnation</div><div>220 Foreclosure</div><div>230 Real Estate & Easements</div><div>240 Torts to Land</div><div>245 Tort Product Liability</div><div>250 All Other Real Property</div></div></div>	<div><div><div>441 Voting</div><div>442 Employment</div><div>443 Housing/Accommodations</div><div>444 Welfare</div><div>440 Other Civil Rights</div></div></div>	<div><div><div>510 Motions to Release Sentence</div><div>Habeas Corpus</div><div>530 General</div><div>535 Court Order</div><div>540 Mandamus & Other</div><div>550 Other</div></div></div>	<div><div><div>710 Fair Labor Standards Act</div><div>720 Labor/Management Relations</div><div>730 Labor/Management Relations</div><div>740 Review Labor Act</div><div>750 Other Labor Legislation</div><div>760 Labor/Management Relations</div><div>770 Labor/Management Relations</div><div>780 Labor/Management Relations</div><div>790 Labor/Management Relations</div></div></div>	<div><div><div>861 SSA (12954)</div><div>862 SSA (12954)</div><div>863 CHIC (Chwv 1405(g))</div><div>864 SSC T-36 XVI</div><div>865 PSI (405(g))</div></div></div>	

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Misdistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE _____ DOCKET NUMBER _____

DATE

3/26/97

SIGNATURE OF ATTORNEY OF RECORD

for George A.B. Pierce

COPY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Lois J. Schiffer
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice

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James C. Woods (N.Y. Bar # 102843)
Assistant United States Attorney
Northern District of New York
445 Broadway, Room 231
Albany, New York 12207
(518) 431-0247

Attorneys for Plaintiff

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLIEDSIGNAL, INC.

and

AMPHENOL CORP.,

Defendants.

U. S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FILED
MAR 28 1997

GEORGE A. RAY, Clerk
ALBANY

97-CV-0436

TJM DNH

No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), brings this Complaint and alleges as follows:

Nature of the Action

1. This is a civil action for recovery of costs brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607. The United States seeks recovery from the above-named defendants of costs incurred by the United States with respect to the release or threatened release of hazardous substances at or from the Sidney Landfill Superfund Site (the "Site") located in the Towns of Masonville and Sidney, Delaware County, New York.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action and over the defendants pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the United States' claims arose, and the threatened and actual releases of hazardous substances at or from the Site have occurred, in this district.

The Defendants

4. Defendant AlliedSignal, Inc. is a corporation that does business at 101 Columbia Road, Morristown, New Jersey.

AlliedSignal is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant Amphenol Corp. is a corporation that does business at 358 Hall Avenue, Wallingford, Connecticut. Amphenol is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendants AlliedSignal and Amphenol are both corporate successors-in-interest to Bendix Corp., which formerly conducted business at its Scintilla Division in the Town of Sidney, New York. Bendix Corp., at times material to this action, was a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

General Allegations

7. The Site comprises the former Sidney Landfill (also hereinafter referred to as the "Site") and those areas affected by contamination that has emanated from the Sidney Landfill, and includes approximately 240 acres in the Towns of Masonville and Sidney, Delaware County, New York.

8. Mr. Devere Rosa purchased the Site on or about November 17, 1967 and began operating it as a municipal and commercial landfill on or about December 1, 1967. At times material to this action, Mr. Rosa disposed of wastes at the Site which he collected from various sources.

9. The Scintilla Division of Bendix Corp., which operated in the Town of Sidney at times material to this action, generated wastes which contained "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10. During the period from 1964 until approximately June 1969, the Scintilla Division of Bendix Corp. arranged with Mr. Rosa for transport and disposal of certain of Bendix's wastes containing hazardous substances. During the period from approximately December 1967 until approximately June 1969, Mr. Rosa disposed of all or a portion of those Bendix wastes at the Site.

11. An engineering investigation completed in 1987 on behalf of the New York State Department of Environmental Conservation indicated the presence of hazardous substances, including metals, volatile organic compounds ("VOCs"), and polychlorinated biphenyls ("PCBs") at the Site.

12. In 1989, the Site was included on the National Priorities List ("NPL") of Superfund Sites, 40 C.F.R. Part 300, Appendix B, established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B). The NPL includes those Superfund sites that EPA has determined present the potential for releases of uncontrolled hazardous substances causing harm to human health or the environment.

13. EPA has completed a remedial investigation and feasibility study ("RI/FS") to evaluate the nature and extent of

the contamination at the Site and to assess remedial alternatives with respect to that contamination.

14. The RI has confirmed the presence of hazardous substances, including, without limitation, pesticides and PCBs, in surface soils and sediments at the Site. Groundwater sampling at the Site has confirmed the presence of hazardous substances, including trichloroethene ("TCE"), 1,1,1-trichloroethane ("TCA"), and their breakdown products, along with other VOCs, including toluene, xylene, and carbon disulfide. Surface water sampling at the Site has confirmed the presence of hazardous substances, including TCE and PCBs. EPA has also found that leachate emanating from the Site contains hazardous substances, including VOCs and PCBs.

15. EPA selected a remedy for the Site in its Record of Decision ("ROD") issued on September 28, 1995 to address the release or threatened release of hazardous substances at or from the Site.

16. Defendants AlliedSignal and Amphenol are currently performing the Remedial Design/Remedial Action ("RD/RA") for the remedy selected in the ROD, pursuant to an EPA Administrative Order issued on July 5, 1996, and subject to oversight by EPA.

17. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or threatened releases of hazardous substances into the environment at or from the Site.

18. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. The United States has incurred response costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), related to the releases or threatened releases of hazardous substances at or from the Site.

20. As a result of its response actions with respect to the Site, the United States has incurred approximately \$2.69 million in costs through July 31, 1996.

21. The costs of response actions by the United States with respect to the Site are not inconsistent with the National Contingency Plan, 40 CFR Part 300, as promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

Claim for Relief

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

...

- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

...

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;
. . . .

42 U.S.C. § 9607(a).

24. Each of the defendants is a corporate successor-in-interest to Bendix Corp., which in turn was a person that contracted for or otherwise arranged for the transport for disposal or treatment at the Site of hazardous substances owned or possessed by Bendix Corp., within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

25. Pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), the defendants are jointly and severally liable to the United States for all costs incurred by the United States with respect to the Site through July 31, 1996, including prejudgment interest.

Prayer for Relief

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

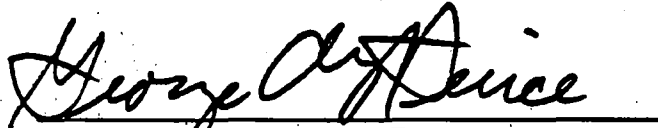
A. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding defendants jointly and severally liable for all costs incurred by the United States with respect to the Site through July 31, 1996, plus interest thereon;

B. Award the United States its costs and fees in this action; and

C. Grant the United States such other and further relief as may be just and proper.

Respectfully submitted,

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice



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THOMAS J. MARONEY
United States Attorney
Northern District of New York



JAMES C. WOODS (N.Y. Bar # 102843)
Assistant United States Attorney
Northern District of New York
445 Broadway, Room 231
Albany, New York 12207
(518) 431-0247

Dated: 3/25, 1997

OF COUNSEL:

BRIAN E. CARR
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region II
290 Broadway
New York, NY 10007-1866

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 97-CV-

ALLIED SIGNAL, INC. and
AMPHENOL CORPORATION,

Defendants.


CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee of the United States Attorney for the Northern District of New York and is a person of such age and discretion as to be competent to serve papers.

That on March 31, 1997, she served a copy of the following: COMPLAINT, FORM 1A (NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS and FORM 1B (WAIVER OF SERVICE OF SUMMONS), by placing same in an envelope (Certified Return Receipt) addressed to the person(s) hereinafter named, at the place and address stated below, which is last known addresses, and by depositing said envelopes and contents in the United States Mail at Albany, New York 12207.

Addressee(s):

Philip H. Gitlen, Esq.
Whiteman, Osterman & Hanna
One Commerce Plaza
Albany, New York 12260


MAUREEN P. COLLINS
PARALEGAL ASSISTANT

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

Form 1B. WAIVER OF SERVICE OF SUMMONS

TO: _____
(Name of Plaintiff's Attorney or Unrepresented Plaintiff)

I acknowledge receipt of your request that I waive service of summons
in the action of _____
(Caption of Action)

which is case number _____ CV _____ in the
(Docket Number)

United States District Court for the Northern District of New York. I have
also received a copy of the complaint in the action, two (2) copies of this
instrument, and a means by which I can return the signed waiver to you
without cost to me.

I agree to save the cost of service of a summons and an additional copy
of the complaint in this lawsuit by not requiring that I (or the entity on
whose behalf I am acting) be served with judicial process in the manner
provided in Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses
or objections to the lawsuit or to the jurisdiction or venue of the court
except for objections based on a defect in the summons or in the service of
the summons.

I understand that a judgment may be entered against me (or the party on
whose behalf I am acting) if an answer or motion under Rule 12 is not served
upon you within SIXTY (60) days after _____, or within
(date request was sent)
NINETY (90) days after that date if the request was sent outside the United
States.

(Date)

(Signature)

Printed/typed name: _____

[as _____]

[of _____]

Duty to Avoid Unnecessary Costs of Service of Summons

(Please refer to the reverse side of this form for information on your Duty
to Avoid Unnecessary Costs of Service of Summons)

NEW WAIVER FORMS (FORM 1(A) and FORM 1(B))

Section 4(d)(2) requires that Form 1A must: (1) be in writing and addressed to the defendant (or to the proper representative if defendant is not a person); (2) identify the court in which the action has been filed; (3) inform the defendant of the consequences of compliance and failure to comply; (4) set forth the date on which the consent is sent; and (5) allow the defendant a reasonable time to return the waiver (at least 30 days from the date on which the Form 1A was sent.)

In order to request a waiver, the plaintiff must send the following four items to the defendant: (1) Form 1A, Notice of Lawsuit and Request for Waiver of Service of Summons; (2) a copy of the complaint with an identification of the court in which it was filed; (3) Form 1B, Waiver of Service of Summons, and an extra copy of this form; and (4) a prepaid means of compliance with the request in writing (e.g., a self-addressed and stamped envelope). Form 1A must be sent through first class mail or other reliable means.

The plaintiff will file the completed Waiver of Service, Form 1B. Under Rule 4(d)(4), that filing date is equivalent to the date of service of the summons and complaint.

The defendant can respond to the Form 1A, Notice of Lawsuit and Request for Waiver of Summons, in one of two ways: (1) sign and return the Form 1B in the time allowed. If the Form 1B is signed and returned, the action proceeds as if the service of summons had been made except that section(d)(3) of the rule allows the defendant 60 days from the date on which the request was sent to respond to the complaint. If Form 1B, is not timely returned, the plaintiff must serve process as provided in the rule, but the plaintiff is allowed to recover costs of service unless there is good cause for the failure to waive service of summons. A defendant who fails to waive service of summons will be assessed the costs subsequently incurred in effecting service which includes a reasonable attorney's fee for any motion required.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NOTICE

THE ATTACHED FILING ORDER IS A TIME SENSITIVE DOCUMENT

1. This filing order is to be served on all parties to the action along with the complaint or petition for removal.
2. Please complete and file the attached Civil Case Management Plan. The completed plan is to be filed with the clerk no later than ten (10) days prior to the conference date referenced below.

CONFERENCE DATE/TIME: July 31, 1997 @ 10:45am

CONFERENCE LOCATION: 5 Courthouse & Federal Bldg. 15 Henry St., Binghamton, NY

BEFORE MAGISTRATE JUDGE: David N. Hurd

3. PAY SPECIAL ATTENTION TO:
 - A. CASE ASSIGNMENT FORM (ATTACHMENT C)
 - DOCUMENT FILING LOCATIONS
 - MOTION SCHEDULE OF THE ASSIGNED JUDGE
 - MOTION SCHEDULE FOR THE ASSIGNED MAGISTRATE JUDGE
 - B. CASE MANAGEMENT DATE/TIME AND LOCATION
 - COMPLETE THE ATTACHED CASE MANAGEMENT PLAN FORM (ATTACHMENT B)
4. CONSENT FORM TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE
 - (ATTACHMENT D)
5. CONSENT FORM TO PROCEED INTO COURT-ANNEXED ARBITRATION
 - (ATTACHMENT E)
6. GENERAL ORDER #41 (ATTACHMENT F)

(A)

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER #25

I. PURPOSE

It is the policy of this court to help litigants resolve their civil disputes in a just, timely and cost-effective manner. To that end, this court has adopted an Expense and Delay Reduction Plan in accordance with the Civil Justice Reform Act of 1990. This court will tailor the level of individualized case management needs to such criteria as case complexity, and the amount of time reasonably needed to prepare the case for trial.

II. SCOPE

This order applies to all civil cases filed in this court except: multidistrict litigation, cases remanded from the appellate court, reinstated and reopened cases, and cases in the following nature of suit categories indicated on the civil cover sheet: Prisoner Petitions (510-550), Forfeiture/Penalty (610-690), Bankruptcy (422-423), Social Security (861-865), Contracts (only nos. 150 (Recovery of Overpayment and Enforcement of Judgment), 151 (Medicare Act), 152 (Recovery of Defaulted Student Loans), 153 (Recovery of Overpayment of Veteran's Benefits), and other contract actions which involve the collection of debts owed to the United States, Real Property (only no. 220 (Foreclosure), and other Statutes (only no. 900 (Appeal of Fee Determination Under Equal Access to Justice)).

* Note - When the Court deems it appropriate Rule 16 Scheduling Conferences will be held in the above excepted actions.

III. SERVICE

A. Timing: When serving a Complaint or Notice of Removal, the filing party shall serve on all other parties a copy of this General Order and the attached materials. Service of process should be completed within Sixty (60) days from the initial filing date. This expedited service is necessary to fulfil the dictates of the Civil Justice Reform Act Expense and Delay Reduction Plan of this court and to ensure adequate time for pretrial discovery and motion practice. However, in no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4, or any other Rule or Statute which may govern service of process in a given action.

B. Filing Proof(s) of Service:
Proof(s) of service of process are to be filed with the clerk's office no later than five (5) days after service of the complaint or notice of removal with a copy of this General Order.

C. Non Compliance with Sixty (60) day Service Requirement:

In the event that the filing party cannot comply with the Sixty (60) day service requirement, that party shall immediately notify the assigned Magistrate Judge and request an adjournment of the initial Rule 16 case management conference date contained in the attached Civil Case Management Plan.

If an adjournment of the conference date is granted, it shall be the responsibility of the filing party to notify all parties to the action of the new date, time and location for the case management conference. Proof of service of such notice shall then be immediately filed with the clerk's office.

IV. ADDITIONAL PARTIES

Any party who, after the filing of the original complaint or notice of removal, causes a new party to be joined in the action shall promptly serve on that new party a copy of General Order #25 along with any additional Uniform Pretrial Scheduling Order that has been entered by the court.

V. REMOVED CASES

In cases removed to this court from a state court, the removing defendant(s) shall serve on the plaintiff(s) and all other parties, at the time of service of the notice of removal, a copy of this General Order with the attached materials.

The filing of a motion for remand does not relieve the moving party of any obligation under this General Order unless the assigned judge or magistrate judge specifically grants such relief.

VI. TRANSFERRED CASES

The clerk shall serve a copy of this General Order on all parties that have appeared in any action transferred to this district. The clerk shall set a return date for the initial Rule 16 case management conference on the form attached to the General Order. It shall be the obligation of the plaintiff or plaintiff's counsel to arrange for completion of the attached Case Management Plan and to file the Plan with the clerk and to serve this General Order upon any party who had not appeared in the action at the time of transfer.

Attorneys appearing in transferred cases are reminded of their obligation to be properly admitted to this district in accordance with Local Rule 83.1.

VII. MATERIALS INCLUDED WITH THIS GENERAL ORDER PACKET

- A) Notice of Initial Rule 16 Case Management Conference
- B) Civil Case Management Plan
- C) Case Assignment Form
- D) Notice and Consent Form to Exercise of Jurisdiction by a United States Magistrate Judge
- E) Notice and Consent Form for Court-Annexed Arbitration
- F) General Order #41

VIII. ADR PROGRAMS

This district has available several dispute resolution services as described below. The Civil Justice Reform Act Advisory Committee is in the process of developing additional ADR programs which will be added to this listing at a later date.

A) Settlement Conferences:

The parties are advised that the court will honor a request for a settlement conference at any stage of the proceeding. A representative of the parties with the authority to bind the parties must be present with counsel or available by telephone at any settlement conference.

B) Court-Annexed Arbitration:

The Northern District offers all litigants in Federal Court the opportunity to consent to proceed into the court's Consensual Court-Annexed Arbitration Program. Pursuant to Local Rule 83.7, the parties may consent to have their case presented to an arbitrator for decision. The cases referred to court-annexed arbitration are heard by qualified individual arbitrator's or three-member panels, usually within six months of the filing of the answer. If a party is not satisfied with the arbitrator's award, the party must file a written demand for trial de novo within thirty days of the entry of judgment on the arbitration award. If no demand for trial de novo is filed, the award becomes the final judgment of the court and is not subject to appellate review.

C. Consent to Jury or Court Trial Before A United States Magistrate Judge:

By written stipulation, the parties to any civil action may elect to have a magistrate judge (instead of the assigned Article III judge) conduct all proceedings in any civil case, including presiding over a jury or bench trial. A trial before a magistrate judge is governed by the same procedural and evidentiary rules as trial before a district judge. The right to appeal is automatically preserved to the United States Court of Appeals under the same standards which govern appeals from an Article III judge. Parties often consent to resolution of their civil disputes by magistrate judge bench or jury trial because magistrate judges have less crowded calendars.

IX. DISCOVERY

A. Discovery Motions: Prior to filing any discovery related motion, the parties must fully comply with the provisions of Local Rule 7.1(e).

B. Filing Discovery: Parties are directed not to file discovery material unless it is being filed in accordance with Local Rule 26.2.

For additional information on local requirements related to depositions and discovery please refer to Section V. of the Local Rules of this court.

X. MOTIONS

A. Motion Return Dates: Please refer to the attached case assignment form for a complete listing of the motion return dates for the judges and magistrate judges of this court.

For additional information on local requirements related to motion practice, please refer to Local Rule 7.1. & also to General Order #41. (Attached to this filing order.)

XI. CASE MANAGEMENT CONFERENCE

Except in actions exempted under Section II of this order, or when otherwise ordered by the court, the parties shall as soon as practicable, meet to jointly address each item contained in the attached Case Management Plan packet. The completed plan is to be filed with the clerk not later than ten (10) days prior to the conference date. The NOTICE setting the date, time, and location for the initial Rule 16 conference with the court is included as part of this filing order.

The Civil Justice Reform Act Plan of this court requires the court to set "early, firm" trial dates, such that the trial is scheduled to occur within eighteen (18) months after the filing of the complaint, unless a judicial officer certifies that (i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or (ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases.

REVISED GENERAL ORDER #25

ENTERED BY THE COURT ON THIS 30th

DAY OF March, 1995

So Ordered: _____

Thomas J. McCreary
Chief U.S. District Judge

G-25.ord - FRM Date: 03/30/95

The 3/30/95 revision clarifies the time frame for filing the case management plan. The revision also includes a provision for issuing G-25 orders on excepted actions when the court deems it appropriate to schedule a Rule 16 conference.

CIVIL CASE MANAGEMENT PLAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

USA

VS

Allied Signal et al.

No. 3:97cv 436
TJM/DNH

IT IS HEREBY ORDERED that, pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable David N. Hurd, United States Magistrate Judge on July 31, 1997, at 10:45 A.M. at the United States Courthouse, Room No , at Binghamton, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below. The report of the parties is to be filed with the clerk not later than **ten (10) days** prior to the above scheduled conference date.

Matters which the Court will discuss at the status conference will include the following: (Insert a separate subparagraph as necessary if parties disagree)

1) **JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before the _____ day of _____, 19____.

2) **AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before the _____ day of _____, 19____.

3) **DISCOVERY:** All discovery in this action shall be completed on or before the _____ day of _____, 19____.
(Discovery time table is to be based on the complexity of the action)

4) **MOTIONS:** All motions, including discovery motions, shall be made on or before the _____, day of _____, 19____.
(Non-Dispositive motions including discovery motions will be heard by the assigned Magistrate Judge)

5) **PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL:** The action will be ready to proceed to trial on or before the _____, day of _____, 19____. It is anticipated that the trial will take approximately _____ days to complete. The parties request that the trial be held in _____

(CITY)

(The proposed date for the commencement of trial must be within 18 months of the filing date)

6) **HAVE THE PARTIES FILED A JURY DEMAND:** ____ (YES) / ____ (NO) .

7) **DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?** _____

8) **WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS IF APPLICABLE)?** _____

9) **WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?** _____

10) **CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?** _____

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

12) WHAT DISCOVERY DOES EACH PARTY INTEND TO PURSUE? CAN DISCOVERY BE LIMITED? ARE LESS COSTLY AND TIME-CONSUMING METHODS AVAILABLE TO OBTAIN INFORMATION?

13) HAS YOUR CLIENT FOUND THIS CASE SUITABLE FOR REFERENCE TO THIS DISTRICT'S VOLUNTARY ARBITRATION PROGRAM?

____ (YES) / ____ (NO) .

IF YOUR CLIENT'S ANSWER WAS NO PLEASE STATE WHY.

14) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

15) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

16) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

17) WHAT ARE THE PROSPECTS FOR SETTLEMENT?

Please circle below the prospect for settlement:

1 2 3 4 5 6 7 8 9 10
(VERY UNLIKELY) - - - - - (LIKELY)

CANNOT BE EVALUATED PRIOR TO _____ (DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED? _____

_____ (Do not indicate any monetary amounts at this time,
settlement will be explored by the Magistrate Judge at the time of the
initial status conference)

Please detach this form and return it to the clerk for
filing at least ten (10) days in advance of the conference date.

Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on
_____ at _____ and was attended by:
(Date) (Place)

_____ for plaintiff(s)

_____ for defendant(s) _____
(party name)

_____ for defendant(s) _____
(party name)

At the Rule 16(b) conference, the Court will issue an order
directing the future proceedings in this action. The parties are
advised that failure to comply with this order may result in the
imposition of sanctions pursuant to Federal Rules of Civil
Procedure 16(f).

cmgmtpl.doc
Case Management Plan
FEM-Date 03/30/95

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE ASSIGNMENT FORM

CIVIL ACTION NUMBER:

3:97cv436

THIS ACTION HAS BEEN ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE SHOWN BELOW.

ALL CORRESPONDENCE AND FILINGS SHOULD BEAR THE INITIALS OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE IMMEDIATELY FOLLOWING THE CIVIL ACTION NUMBER.

(IE: CIVIL ACTION NO. 5:95-CV-0123, TJM-DNH)

*ALL ORIGINAL PAPERS MUST BE FILED WITH THE CLERK'S OFFICE THAT HAS BEEN CHECKED ON SIDE 2 OF THIS FORM.

(REFER TO PAGE #2 FOR MAILING ADDRESSES)

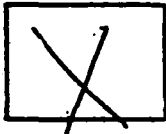
ACTION ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE CHECKED BELOW:

		<u>INITIALS</u>
X	CHIEF JUDGE THOMAS J. McAVOY	(TJM)
	JUDGE FRDERICK J. SCULLIN, JR.	(FJS)
	JUDGE LAWRENCE E. KAHN	(LEK)
	JUDGE ROSEMARY S. POOLER	(RSP)
	SENIOR JUDGE NEAL P. McCURN	(NPM)
	SENIOR JUDGE HOWARD G. MUNSON	(HGM)
	MAGISTRATE JUDGE GUSTAVE J. DiBIANCO	(GJD)
X	MAGISTRATE JUDGE DAVID N. HURD	(DNH)
	MAGISTRATE JUDGE DANIEL SCANLON, JR.	(DS)
	MAGISTRATE JUDGE RALPH W. SMITH, JR.	(RWS)
	MAGISTRATE JUDGE DAVID R. HOMER	(DRH)

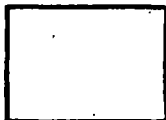
SEND ALL ORIGINAL PAPERS TO THE CLERK'S OFFICE CHECKED BELOW



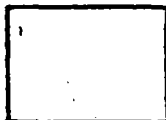
-
CLERK, U.S. DISTRICT COURT
FEDERAL BUILDING AND COURTHOUSE
POST OFFICE BOX 7367
SYRACUSE, NEW YORK 13261-7367



-
CLERK, U.S. DISTRICT COURT
FEDERAL BUILDING AND COURTHOUSE
15 HENRY STREET
BINGHAMTON, NEW YORK 13902



-
CLERK, U.S. DISTRICT COURT
JAMES T. FOLEY U.S. COURTHOUSE
445 BROADWAY, ROOM 222
ALBANY, NEW YORK 12207-2924



-
CLERK, U.S. DISTRICT COURT
ALEXANDER PIRNIE FEDERAL BUILDING
AND U.S. COURTHOUSE
10 BROAD STREET
UTICA, NEW YORK 13501

All papers filed with the clerk must conform to Local Rule 10.1

ALL NON-DISPOSITIVE MOTIONS ARE TO BE MADE RETURNABLE ON A SUBMIT BASIS BEFORE THE ASSIGNED MAGISTRATE JUDGE. *PLEASE SEND THE ORIGINAL PAPERS TO THE OFFICE OF THE CLERK AS CHECKED ON PAGE #2 OF THIS FORM.

** ALL MOTIONS FILED AND MADE RETURNABLE BEFORE MAGISTRATE JUDGES WILL BE TAKEN ON A SUBMIT BASIS UNLESS: THE PARTIES REQUEST ORAL ARGUMENT AND/OR THE COURT DIRECTS THE PARTIES TO APPEAR FOR ORAL ARGUMENT.

JUDGE KAHN, SENIOR JUDGE McCURN AND SENIOR JUDGE MUNSON WILL NOT HAVE REGULAR MOTION DAYS DURING THE MONTH OF AUGUST. JUDGE McAVOY WILL NOT HAVE REGULAR MOTION DAYS DURING THE MONTH OF JULY.
MOTIONS MAY NOT BE FILED WITHOUT PRIOR APPROVAL OF THE COURT DURING THESE PERIODS.

MONTHLY MOTION SCHEDULES

CHIEF JUDGE THOMAS J. McAVOY
10:00 A.M. - 2ND MONDAY AT ALBANY
10:00 A.M. - 4TH FRIDAY AT BINGHAMTON

JUDGE FREDERICK J. SCULLIN, JR.
10:00 A.M. - 2ND FRIDAY AT SYRACUSE
10:00 A.M. - 3RD THURSDAY AT ALBANY

* The above schedule for Judge Scullin is subject to change. Please contact the Syracuse Clerk's Office for confirmation of dates.

JUDGE LAWRENCE R. KAHN
9:30 A.M. - 1ST AND 3RD FRIDAY AT ALBANY

JUDGE ROSEMARY S. POOLER
10:00 A.M. - 1ST AND 3RD MONDAY AT SYRACUSE

SENIOR JUDGE HOWARD G. MUNSON
10:00 A.M. - 2ND FRIDAY AT SYRACUSE
11:00 A.M. - LAST MONDAY OF THE MONTH AT ALBANY

SENIOR JUDGE NEAL P. McCURN
10:00 A.M. - 2ND AND 4TH TUESDAYS AT SYRACUSE
11:00 A.M. - 1ST TUESDAY AT ALBANY

MAGISTRATE JUDGE GUSTAVE J. DIBIANCO
10:00 A.M. - LAST THURSDAY OF EACH MONTH AT SYRACUSE

MAGISTRATE JUDGE DAVID N. HURD
10:00 A.M. - 2ND THURSDAY OF EACH MONTH AT UTICA

MAGISTRATE JUDGE RALPH W. SMITH
9:30 A.M. - 1ST THURSDAY OF EACH MONTH AT ALBANY

MAGISTRATE JUDGE DANIEL SCANLON, JR.
10:00 A.M. - 3RD THURSDAY OF EACH MONTH AT WATERTOWN

MAGISTRATE JUDGE DAVID R. HOMER
9:30 A.M. - 3RD THURSDAY OF EACH MONTH AT ALBANY

FRM DATE: 07/25/96

**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE
TO EXERCISE OF JURISDICTION AND APPEAL OPTION**

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that a United States Magistrate Judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. Section 636(c), an appeal from a judgment entered by a magistrate judge will be taken to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the consent form are available from the clerk of the court.

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

D-2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

NOTICE TO ALL LITIGANTS

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK IS PROUD TO BE A MEMBER PILOT COURT SPONSORING A VOLUNTARY COURT-ANNEXED NON-BINDING ARBITRATION PROGRAM.



BECAUSE THE ARBITRATION PROGRAM WAS CHOSEN DUE TO ITS ADJUDICATIVE NATURE, THE PARTIES SHOULD CONSIDER THE COST OF ARBITRATION, A FAIR AND VIRTUALLY FREE FORUM, VERSUS THE MORE COSTLY FULL TRIAL IN FEDERAL COURT.

ALL COUNSEL AND LITIGANTS ARE ENCOURAGED TO TAKE ADVANTAGE OF THIS PROGRAM AND TAKE PART IN THIS INNOVATIVE APPROACH TO RESOLVING CONFLICT.

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

**THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
COURT ANNEXED - A R B I T R A T I O N**

ARBITRATION CONSENT FORM AND HEARING SCHEDULE INFORMATION SHEET

Plaintiff,)	
)	Civil Case # _____
)	
)	Assigned Judge/Magistrate:
VS)	_____
)	
)	
)	
Defendant,)	

In accordance with the provisions of 28 U.S.C. Section 652 (a) (1) (A) and Local Rule 83.7, the parties to the above captioned civil matter hereby consent to proceed into non-binding arbitration under Local Rule 83.7 and have their case heard by an arbitrator or arbitrators chosen by the parties in an attempt to justly, efficiently, and economically resolve this controversy without giving up any rights to a full trial on demand.

Please estimate the number of days needed for discovery

Please estimate the number of day(s) that the hearing will take: _____

Pursuant to Local Rule 83.7-4(b) the parties have agreed that the Arbitration Hearing will proceed before:
(Please check one category)

Single Arbitrator: _____

Panel of Three Arbitrators: _____

The arbitration hearing will be set based upon the information presented on this form. That hearing date will not be vacated except upon showing of extreme and unanticipated emergency made at least ten days before the scheduled date.

Please sign the form and return it to the clerk within ten (10) days of receipt. Pursuant to Local Rule 83.7-2 it shall be the responsibility to the Plaintiff for securing the execution of the consent form by the parties and for filing such form with the Court.

No party or attorney shall be prejudiced for refusing to participate in the arbitration program.

Counsel for Plaintiff
or Plaintiff if appearing
Pro Se.

Counsel for Defendant
or Defendant if appearing
Pro Se.

For purposes of case tracking, the Federal Judicial Center requires all pilot courts to collect the following information on cases that are referred to arbitration.

Information on COUNSEL: Plaintiff

Defendant

Name: _____

Address: _____

Phone # _____

Information on PARTIES: Plaintiff

Defendant

Name: _____

Address: _____

Phone # _____

(Use additional sheet if necessary)